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Supreme Court of the United States

OCTOBER TERM, 1954

No. 450

WALKER DALE BOSTON BATES,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITIONER'S REPLY TO MEMORANDUM FOR THE UNITED STATES

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MAY IT PLEASE THE COURT:

I.

The Government states that the court below expressly held that there was no basis in fact for the denial of the ministerial status, which claim was "lacking in sincerity." Then in a footnote it is stated: "There was no substance whatever to petitioner's claim" for classification as a minister of religion. This argument is entirely beside the point. In the Court of Appeals, as in the petition for writ of certiorari here, no challenge was made against the denial of

the ministerial status. The fact that the ministerial claim was baseless has no relationship whatever to the conscientious objector claim. It is immaterial and irrelevant to talk about the ministerial status.—See the memorandum for the United States, pages 9-10.

II.

It is stated that petitioner is in error in interpreting the decision of the Court of Appeals. It is said that the Court of Appeals did not hold that petitioner waived his claim by appealing. The position of the United States is patently inconsistent with the quotation that appears on page 10 of the memorandum. There the trial judge is quoted as saying that petitioner abandoned "his claim for 1-O classification" by "asserting a claim for a ministerial exemption."

The Government says the holding was that petitioner was not sincere because he claimed two classifications. This is in defiance of the regulations that authorize the petitioner to urge to the board all the claims that he felt entitled to make under the law before the board. (See Section 1626.26(a) of the Selective Service Regulations.) The argument of the Government is that if a registrant exercises the right under the regulations of pressing the ministerial claim and the conscientious objector claim and he fails on the ministerial claim, this is conclusive proof of insincerity as a conscientious objector. This argument is penalizing. There is no basis for it in the regulations. The position is contrary to the regulations and to the Selective Service practice. The position of the Government and the holding of the court below are in direct conflict with *Cox* v. *Wedemeyer*, 9th Cir., 1951, 192 F. 2d 920; *Sterrett* v. *United States*, No. 12,901, 9th Cir., Oct. 25, 1954; *Franks* v. *United States*, 9th Cir., Oct. 4, 1954, 216 F. 2d 266.

The position of the Government is a mere play upon words. To hold that there was factual basis for the denial of the conscientious objector claim, purely because the

petitioner shifted from the conscientious objector to the ministerial claim, is just another quibbling way of saying that petitioner waived his conscientious objector claim. (See the memorandum for the Government, pages 10-11.) This Court is bound to deal with substance and not engage in a game of semantics and make hair-splitting distinctions that are immaterial and irrelevant, such as those the Government, in its memorandum on pages 10-11, asks the Court to make.

III.

The Government takes the position that the claim of Bates was rejected by the national board because it was not based on "an abhorrence to war" but upon his desire "not to submit to any form of civil authority." This position of the Government is speculative in the extreme. The National Selective Service Appeal Board wrote no opinion. The speculation of the Government has been condemned in *United States* v. *Hagaman*, 3rd Cir., 1954, 213 F. 2d 86; *Shepherd* v. *United States*, No. 14,105, 9th Cir., Dec. 13, 1954. The argument of the Government that "this type of opposition to authority is not a basis for deferment under the statute" is rejected by *Franks* v. *United States*, 9th Cir., Oct. 4, 1954, 216 F. 2d 266. In that case the court said:

> "We are not unaware of the high probability that Franks, had he been classified I-A-O, would nevertheless have refused induction and ultimately found himself indicted in much the same manner as has happened here. Perhaps the local board and the hearing officer and the appeal board also had the feeling that they might as well classify the appellant as I-A for the reason that like other Jehovah's Witnesses he would probably refuse induction as a I-A-O.

"It is our view, however, that it was not for the local board, any more than it is for this court, to say that the registrant should not be placed in a certain classification merely because he did not want that classification or was seeking a lower class or would probably refuse to acquiesce in such a classification. At the time of the local board's classification, the Regulations, Title 32, Sec. 1623.2, provided as follows:

"'Upon undertaking to classify any registrant, unless grounds are established to place the registrant in Class I-C under the provisions of Sec. 1622.7 of this chapter, the registrant shall be classified in the lowest class for which he is determined to be eligible with Class I-A considered the highest Class and Class V-A considered the lowest class according to the following table: . . .' (In the table Class I-A-O is listed below Class I-A.)

"If some doctrine of waiver by the registrant were to be applied by the local board, then the mere fact that the registrant was claiming a lower classification than he was entitled to, could be used as a basis for classifying any registrant I-A. In *Cox* v. *Wedemeyer*, 9 cir., 192 F. 2d 920, we rejected and disapproved a similar suggestion in respect to classifications by an appeal board."

IV.

The decision of the court below is in direct conflict with *Clementino* v. *United States*, 9th Cir., Sept. 27, 1954, 216 F. 2d 10; *Hinkle* v. *United States*, 9th Cir., Sept. 24, 1954, 216 F. 2d 8; *Goetz* v. *United States*, 9th Cir., Oct. 14, 1954, 216 F. 2d 270; *Franks* v. *United States*, 9th Cir., Oct. 4, 1954, 216 F. 2d 266; *Brown* v. *United States*, 9th Cir., Oct. 4, 1954, 216 F. 2d 258; *Blevins* v. *United States*, No. 14,189, 9th Cir., Nov. 26, 1954; *Pitts* v. *United States*, No. 14,164, 9th Cir.,

Dec. 7, 1954; *Clark* v. *United States*, No. 14,176, 9th Cir., Dec. 3, 1954; *Affeldt* v. *United States*, No. 13,941, 9th Cir., Dec. 14, 1954; *Shepherd* v. *United States*, No. 14,105, 9th Cir., Dec. 13, 1954.

V.

Recently the United States Court of Appeals for the Tenth Circuit, in *Ypparila* v. *United States*, No. 4937, decided on December 22, 1954, in a factual situation identical to that in this case declared there was no basis in fact for the denial of the conscientious objector status. The Government made identically the same argument in that case as is made here. The decision of the court below is in direct conflict with the case of *Ypparila, supra.*

VI.

It is difficult to understand how the Government can argue to this Court, in the face of the record here, that Bates "lacked personal sincerity," when there is not one word in the draft board record to indicate such lack. The district court indulged in speculation contrary to *Dickinson* v. *United States*, 346 U. S. 389 (1953), when, without any finding by the National Selective Service Appeal Board, it declared that Bates lacked personal sincerity. Both the local board and the district appeal board found Bates to be sincere as a conscientious objector. There was nothing in the record to dispute this finding. The national board had nothing but the record before it. The speculation of the Government and of the district court and also of the court below is rejected in *Pitts* v. *United States*, No. 14,164, 9th Cir., Dec. 7, 1954; and *Shepherd* v. *United States*, No. 14,105, 9th Cir., Dec. 13, 1954, in factual situations not nearly so strong as those in this case.

In *United States* v. *Taffs*, No. 576, October Term, 1953, the Solicitor General told this Court that he did not present a question as to the sincerity of Taffs. The case of the

petitioner here is much stronger. In this case Bates has been found to be sincere by the local board and the district appeal board and he has not been found insincere by the National Selective Service Appeal Board. The national board's finding was not based upon a lack of sincerity, but was based upon the proposition that not one of Jehovah's Witnesses is a conscientious objector.—*United States* v. *Hagaman,* 3rd Cir., 1954, 213 F. 2d 86; *United States* v. *Kezmes,* W. D. Pa., No. 14012 Cr., Oct. 22, 1954.

CONCLUSION

It is not appropriate, as stated by the United States, to "defer action on this petition until the pending conscientious objector cases are decided." The reasons are explicitly stated by the petitioner at pages 15-16 of the petition. The National Selective Service Appeal Board persists in its illegal policy of holding that all of Jehovah's Witnesses are not conscientious objectors. This policy will not be corrected in the other cases because none of them involves a situation where the local board and the district appeal board gave the registrant a conscientious objector classification and the National Appeal Board reversed such classification and gave a *de novo* I-A classification without stating reasons. The issue involved here will not be determined in the pending conscientious objector cases.

WHEREFORE, for the reasons stated above and in the petition for writ of certiorari, the writ should be granted.

Respectfully submitted,

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